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SERVICE DATE – MARCH 10, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 206X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN POLK  
AND STORY COUNTIES, IA

Decided: March 9, 2005

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 14.0-mile line of railroad, known as the Ankeny Subdivision, extending from milepost 10.7 near Ankeny to milepost 341.1 (Equation:  $23.20 = 339.60$ ) near Slater, in Polk and Story Counties, IA. Notice of the exemption was served and published in the Federal Register on August 5, 2003 (68 FR 46264). By decision and notice of interim trail use or abandonment (NITU) served on September 3, 2003, the proceeding was reopened and a 180-day period was authorized for the Story and Polk County Conservation Boards (the Counties) and the Iowa Natural Heritage Foundation (INHF) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding.<sup>1</sup> The negotiating period under the NITU was extended by decisions served on March 15, 2004, and September 23, 2004. The latest extension expired on March 2, 2005.

On March 2, 2005, INHF filed a motion on behalf of the Counties to extend the negotiating period until September 2, 2005. INHF indicates that INHF and the Counties have been negotiating with UP but the parties need additional time to complete the negotiations. By facsimile received on March 2, 2005, and by letter filed on March 3, 2005, UP advises that it is willing to continue to negotiate with INHF and supports the request for an extension of the negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to September 2, 2005.

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<sup>1</sup> The decision and notice also made the exemption subject to a historic preservation condition.

<sup>2</sup> See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to September 2, 2005.
3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary